Wednesday, August 28, 2002
In re

JEFFREY E. HAYNES, No. 02-10148

Debtor(s).

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LARRY L. RUSSELL, A.P. No. 02-1109

Plaintiff(s),

v.

JEFFREY E. HAYNES,

Defendant(s).

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Memorandum on Motion for Summary Judgment

Ordinarily, litigants in non-bankruptcy proceedings are not required to conduct their litigation with an eye toward possible future bankruptcy proceedings. Brown v. Felson, 442 U.S. 127, 135, 60 L.Ed.2d 767, 774 (1979). However, if a settlement in state court clearly expresses the mutual intent for a complete novation, erasing all prior claims, then a plaintiff cannot revive a pre-settlement claim in a subsequent bankruptcy case. In re Fischer, 116 F.3d 388, 390 (9th Cir. 1997).

In this case, the agreement does not qualify as a novation. While part of it recites that it is in full settlement of all claims, it also says that "[a]ll claims not expressly granted or reserved herein are hereby denied." (emphasis added). The concept of reserved rights is inconsistent with novation.

A review of the settlement agreement makes it clear that a novation was not intended. There is an express reservation of rights as to one claim in paragraph 1. In two other places (paragraphs 12 and 16), the stipulation refers to disputes concerning the "underlying litigation" as well as the stipulation itself. These provisions disprove the debtor's claim to a novation.

For the foregoing reasons, the debtor's motion for summary judgment will be denied. Counsel for plaintiff shall submit an appropriate form of order.

Dated: August 28, 2002

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Alan Jaroslovsky
U.S. Bankruptcy Judge
